

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-00329-RJC
(3:13-cr-00153-RJC-1-RJC)

ZACHARY NATHANIEL GRAVES,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court on consideration of the Respondent’s motion to stay disposition of the 28 U.S.C. § 2255 Motion to Vacate. Petitioner does not oppose this motion. (Doc. No. 3).

Petitioner challenges his conviction for the possession of a firearm during and in relation to a “crime of violence” as prohibited by 18 U.S.C. § 924(c)(1)(A). Petitioner’s predicate crime of violence was a conviction for a Hobbs Act robbery under 18 U.S.C. § 1951. Petitioner argues that the Hobbs Act robbery is no longer a crime of violence following the Supreme Court’s decision in United States v. Johnson, 135 S. Ct. 2551 (2015), in which the Court struck down the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), after concluding that it was unconstitutionally vague.¹

Respondent moves to stay this collateral proceeding until the Fourth Circuit issues its mandate in the case of United States v. Ali, No. 15-4433, in which the Court will examine whether the residual clause of 18 U.S.C. § 924(c)(3)(B) is unconstitutional based on the Johnson

¹ The residual clause of the ACCA provides, in pertinent part, that a “violent felony” is a crime that “involves conduct that presents a serious risk of physical injury to another.” Id. § 924(e)(2)(B)(ii).


decision. This case is tentatively scheduled for oral argument in October.

The Court finds that because the issue involved in Ali may be relevant to the resolution of Petitioner's case, the Court will grant Respondent's motion.

IT IS, THEREFORE, ORDERED that Respondent's motion to stay is **GRANTED**, (Doc. No. 3), and Respondent shall have 60-days after the Fourth Circuit issues its mandate in Ali to file a response to Petitioner's Motion to Vacate.

SO ORDERED.

Signed: September 6, 2016


Robert J. Conrad, Jr.
United States District Judge

